IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.383 OF 2006
IN
ADMIRALTY SUIT NO.5 OF 2005

Premier Explosives Limited Plaintiff

versus

m.v."EUGENIA" Defendant

Mr.P.S.Pratap with Mr.Manoj Khami and Monica Kohli for plaintiff.

Mr.V.R.Dhond with Mr.Aashish Kamath i/by Cr.Beyley & Co. for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th April 2006

PC :

1. Heard Shri Pratap appearing for plaintiff and Shri Dhond for defendant. The Chamber Summons is for amendment to the plaint as per Schedule annexed thereto.

2. Shri Pratap appearing for the plaintiff invites my attention to the affidavit in support of this Chamber Summons and submits that in the affidavit in support it has been pointed out in

paragraph no.2 that present suit is filed for recovering amounts due to the plaintiff on account of loss and damage to their goods carried on board defendant no.2 vessel and for breach of contract of carriage by the owners of defendant.

3. Shri Pratap invites my attention to the averments in the plaint and submits that insofar as plaint averments pertaining to Bahrain Cargo are concerned, from the documents which are annexed to the plaint it is apparent that the shipper of the cargo to Bahrain is Premier Explochem Limited. The plaintiff are Premier Explosives Limited. The suit was filed on 30th January 2006. Notice of Motion being Notice of Motion No.824 of 2006 was taken out in this suit and while an order was being passed on that Notice of Motion on 28th March 2006 it came to the notice of the plaintiff that the plaint averments pertain to a cargo, shipper of which is the sister concern namely Premier Explochem Limited. Shri Pratap points out that Premier Explochem Limited is 100% subsidiary of the plaintiff. The Directors are common. The office premises are situate in the same building. The deponent of the affidavit in support is Director of Premier Explochem Limited. He has also

verified the averments in the plaint. In these circumstances, when no prejudice is going to be caused to the defendant by addition of Premier Explochem Ltd. as plaintiff no.2, the Chamber Summons be granted.

4. He submits that no new case is being set out. The amendment is only to implead Premier Explochem Ltd. as plaintiff no.2. The cause of action remains the same. The nature of the relief also remains the same. In these circumstances, this Chamber Summons be allowed. He relies upon a judgement of this Court reported in AIR-2000-Bom-174 (Fordie Metals Ltd. Vs. m.v."Tibor Szamuely" and Order I, Rule 10 of CPC..

5. On the other hand, Shri Dhond - learned counsel appearing for the defendants submits that this Chamber Summons cannot be granted. He submits that by suppressing the fact that Premier Explochem is the licensee and therefore shipper of the cargo, an order of arrest of defendant vessel has been obtained. That order must be vacated and for that purpose a Notice of Motion is taken out by the defendant. He submits that this is not a case of misdescription or

impleadment of a wrong person but a case where the details of shipper of the cargo are not at all set out and the plaintiff has tried to pass off the cargo which was to be shipped to Bahrain as belonging to it. The title of this cargo is admittedly not that of the plaintiff. In these circumstances, by amendment this defect is not curable. He submits that the issue goes to the root of the matter and this Court should, therefore, exercise its powers under Order VII, Rule 11 (a) of the CPC and reject the plaint as also vacate the order of arrest. He relies upon a decision of this Court reported in AIR-1989-Bom-96 (Dodsal Pvt. Ltd. Vs. Narmada Seaways Ltd. and others).

6. In my view, when Notice of Motion No.824 of 2006 was placed before me long after order of arrest and relief was sought in terms thereof and my attention was invited to the documents, that it came to my notice as also the notice of plaintiff that insofar as the cargo which is on board the vessel, for shipment to Bahrain, belongs to Premier Explochem Limited. Despite this position, on 28th March 2006, no objection was raised and it was agreed between parties that the cargo should be inspected and offers invited

from interested parties to purchase the same. This Notice of Motion was taken out on 13th March 2006. That was moved on 14th March 2006 and orders were passed after the same was adjourned from time to time on 28th March 2006. It is not as if the plaintiff is setting up a title in the cargo which belongs to a distinct and altogether different party. It is the case of the plaintiff that Premier Explochem Ltd. is 100% subsidiary with common Directors. The registered office of this company is in the same building as well. These facts are not denied in the affidavit in reply but what is alleged is that being a sister concern is not enough and it is clear that Premier Explochem would have to take out independent proceedings. The statements made on affidavit are to the following effect :-

> " (e) By the present Chamber Summons, the Plaintiffs seek to bring the said Premier Explochem Limited on record. In view of the aforesaid, it is apparent that the Plaintiffs had no right, title or interest to institute the present suit, vis-a-vis the Bahrain cargo. The Chamber Summons, as framed, is misconceived. The Chamber Summons is not one for amendment but for the addition of a new Plaintiff. The Plaintiff is seeking the amendment to cure a fatal defect in the suit which defect is incurable since the suit as framed is not maintainable. The Defendant submits that the effect of the present Chamber Summons is to agitate a

> completely new and inconsistent cause of action to that pleaded in the Plaint wherein the Plaintiffs have categorically claimed ownership of the Bahrain cargo. Such an amendment is, therefore, inconsistent and/or self destructive of the pleadings in the Plaint. For the reasons set out more particularly hereinbefore, the present Chamber Summons has been taken out by the Plaintiffs only with a malafide view of covering up its acts of suppression and the false statements made by it in the Plaint and/or the lacunas in the Plaint. Such amendments ought not to be allowed. Allowing the Chamber Summons would, therefore, amount to putting a premium on the Plaintiffs' dishonesty and lack of bonafides. Allowing the Chamber Summons would also render the suit bad for misjoinder of parties since ordinarily the said Premier Explochem Limited would have been required to institute an independent suit in respect of its alleged claim as its alleged cause of action is based on an independent and distinct contract. The said Premier Explochem Limited, therefore, ought not to be joined as party to the suit. In the circumstances, the present Chamber Summons is liable to be rejected with costs."

7. Shri Dhond is unable to point out to me as to how a completely new and inconsistent cause of action is being pleaded by the amendment by which Premier Explochem Ltd. are being impleaded as plaintiff no.2. Shri Dhond has also been enable to substantiate his pleas with regard to malafides save and except pointing out that the plaintiffs have not disclosed till date of the filing of the Chamber Summons that they have no

title insofar as Bahrain cargo is concerned. If a separate suit could have brought with regard to this cargo, then in my view, merely by allowing the plaintiff to implead Premier Explochem Ltd. as plaintiff no.2, does not in any manner prejudice the defendant. More so, when the same vessel carried the cargo of both entities. It is not as if there is any distinct agreement with regard to the cargo to Baharin.

8. One of the objects of exercising this Court's jurisdiction to permit amendment, is to prevent multiplicity of proceedings as well. Similarly, there are ample powers in this Court while allowing amendment to take note of the mistake on the part of the plaintiff. This Court's power under Order I, Rule 10 is also wide enough to take care of a contingency and when it is brought to the notice of this Court that a suit is instituted in the name of a person, but the presence of another person, who should be and ought to be impleaded, is necessary for complete and effective conclusion of the controversy, then it is not as if this Court is totally powerless. The plaintiff has brought to the notice of this Court its mistake at the earliest. It wants to implead Premier Explochem Limited for complete

and effective adjudication of the controversy between the parties. Additionally, it is pointed out that the mistake is bona fide. It is not as if the documents pertaining to Premier Explochem Ltd. are not on record. They are very much annexed to the plaint. In these circumstances, I see no prejudice being caused to the defendant if the Chamber Summons is allowed.

9. It is not necessary to go into the issues which are raised by relying upon judgements of this Court. Since I have decided the Chamber Summons in the light of the admitted facts, as also the power of this Court flowing from the provisions noticed above, it is not necessary to decide any wider controversy. Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out within two weeks from today. Copy of the amended plaint to be served on the defendants two weeks thereafter and written statement/additional written statement to be filed within four weeks thereafter.

10. As far as Notice of Motion No.1115 of 2006 is concerned no orders be passed thereon. In all fairness, in the light of the order passed in the Chamber Summons, Shri Dhond states that Notice of

Motion No.1115 of 2006 would not survive. It is disposed of accordingly.

(S.C.DHARMADHIKARI, J.)